CIVIL SERVICE LAWS OF OHIO

Compiled by
Legislative Reference Department

Published by Direction of
Board of Library Commissioners

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COMPILED BY

LEGISLATIVE REFERENCE DEPARTMENT

PUBLISHED BY DIRECTION OF

BOARD OF LIBRARY COMMISSIONERS

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Columbus, Ohio, August 28th, 1915.

Board of Library Commissioners,
Columbus, Ohio.

Gentlemen: —

I herewith transmit to you a copy of the civil service law of Ohio, enacted at the regular session of the eighty-first General Assembly. With the text of the law are included references to court decisions and opinions of the Attorney General of Ohio. These are preceded by introductory notes and views of eminent men on civil service reform.

In the preparation of this publication I have had the assistance of George A. Edge, Mildred Van Schoick and Clara Hack.

Very respectfully yours,

C. B. GALBREATH,
Director Legislative Reference Department.

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INTRODUCTORY NOTE.

The question of civil service reform is older than the United States. It was agitated in the colonies before the revolution. A recent writer of high authority declares that it was one of the efficient causes of our struggle for independence. Travelyan, the eminent historian, declares that the use of patronage to influence legislation, and the creation of sinecures for the privileged classes and personal favorites of the British government were powerful agencies for the alienation of the colonists. "It was a system," says he, "which, as its one achievement of first order, brought about the American war and made England sick, once for all, of the very name of personal government."

The feeling of the colonists on this subject is reflected in the Declaration of Independence, which includes in its arraignment of King George III, the following:

"He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries."

"He has created a multitude of new offices, and sent over swarms of officers to harass the people and eat out their substance."

Civil Service in the Nation.

At the close of the revolution our government strove to avoid the evils that it had charged against the mother country. In framing the constitution no fixed term of office was established in the executive branch of the government except for the president and vice-president, and the early statesmen of the Republic opposed the removal of meritorious officers, James Madison going so far as to

declare that such action on the part of the appointing power was an impeachable offense. For the first forty years the presidents of the United States, down to and including John Quincy Adams, made no attempt to remove officials for political or other reasons during good behavior and efficient service.

In 1820 a measure known as the "four year tenure of office act" was passed by congress. This, as its title suggests, placed a limit to the term of appointive officials and really paved the way for the introduction of the spoils system. At first there was no disposition to take advantage of this law. Efficient public servants were reappointed without question at the expiration of their term. About nine years later, however, a movement on an extensive scale was inaugurated to establish what is known as "rotation in office."

The influence that practically established this "spoils system" in America seems to have originated in the state of New York. The introduction of this system was quietly urged by Martin Van Buren of that state who had great influence with President Jackson. Another statesman from New York, Senator Marcy, supported this new departure, and in attacking Senator Henry Clay, who was opposing the confirmation of Van Buren for a diplomatic position, Marcy gave expression to the words frequently attributed to President Jackson: "To the victor belongs the spoils of the enemy."

Under the administration of President Jackson and the shrewd manipulation of Martin Van Buren, the spoils system grew rapidly.

Once firmly established, no succeeding administration seemed to have the power to resist it. Those that were out of office usually denounced it, only to prove their apostasy to their professions when they were themselves elevated to power.

The system reached every department of the national government and spread to all of the states. President

Grant strove in vain to check its progress. It grew rapidly until it culminated in the assassination of President Garfield. This deed smote the conscience of the nation and greatly strengthened the supporters of civil service reform, who, against great odds, for years had been attempting to enlist in their cause the executive officers of the government and the members of congress.

The congress that assembled in December, 1882, the year after the death of Garfield, took up and seriously considered the civil service bill which had been introduced earlier by Hon. George H. Pendleton, Senator from Ohio. The debate on this measure sets forth in detail the arguments against the system of partisan appointments. The opposition to the bill labored under great difficulties, and, facing certain defeat, their arguments were somewhat lacking in force and vigor. In the Senate the measure carried by a vote of 38 to 5; in the House by a vote of 155 to 47. This law, which is generally known as the Pendleton act, is the national civil service law of today.

Civil Service In the States.

New York and Pennsylvania were conspicuous in the adoption of the "spoils system" before it was introduced by the general government. In time all of the states followed their example. Coincident with the movement for the adoption of the merit system in the nation, there developed an effort to introduce it into states and municipalities. Civil service laws were enacted by New York in 1883; Massachusetts in 1884; Wisconsin in 1905; Colorado in 1907; New Jersey in 1908; Illinois and Connecticut in 1911; Ohio and California in 1913. The Ohio law was materially modified in 1915. The revision is included in this publication.

The merit system was recognized by constitutional provision in New York, 1894; in Ohio, 1912.

Do the People Wish Civil Service Reform?

This question is answered by Albert Bushnell Hart, a conservative writer of high authority, as follows:

"Do the people wish administrative reform? Yes, they wish it; but very much as they wish virtue and the rights of man. They wish the reform brought about, but brought about by somebody else, without responsibility on them or on their legislators. On the other hand, they make it clear to their representative and to the political parties that the reform is not a thing that it is safe to oppose. They wish the executive to enforce it impartially. They wish the civil service commission to show pluck; and the vigorous action of the commission, whenever it finds evasion of the law, will have the hearty approval of public sentiment."

Thus wrote Professor Hart in 1893. He complained of difficulty in determining the attitude of the people toward civil service reform. At that time no considerable number of electors had voted directly on this system.

Since that date, however, we have had in two separate states, where this reform had not been long or vigorously agitated, a rather convincing test of the attitude of the people.

In November of 1910, Illinois, which previously had a limited merit system in its state benevolent institutions, submitted to the electors for advisory instruction the question of civil service for the entire state with the following result:

For civil service	411,676
Against civil service	121,133
Majority for civil service.....	290,543

The constitutional convention of Ohio in 1912 submitted to the people a state wide civil service amendment

to the constitution, which was voted on at the special election held September 3d of that year, with the following result:

For civil service	306,767
Against civil service	204,580
Majority for civil service	102,187

The ambitious and weatherwise politician, who, in conference with his "workers" and retainers, is tempted at times to deride civil service reform, may find it to his advantage to ponder the foregoing brief but significant election statistics.

OPINIONS OF EMINENT MEN.

Scarcely a day passes in which applications of one kind or another do not arrive; insomuch that, had I not early adopted some general principles, I should before this time have been wholly occupied in this business. As it is, I have found the number of answers, which I have been necessitated to give in my own hand, an almost insupportable burden to me. The points in which all these answers have agreed in substance are, that, should it be my lot to go again into public office, I would go without being under any possible engagements of any nature whatsoever; that, so far as I knew my own heart, I would not in the remotest degree be influenced in making nominations by motives arising from the ties of family or blood; and that, on the other hand, three things, in my opinion, ought principally to be regarded, namely: the fitness of character to fill offices, the comparative claims from the former merits and sufferings in service of the different candidates, and the distribution of appointments in as equal a proportion as might be to persons belonging to the different States of the Union.

George Washington.

I could not, in any case, think it just to turn out those in possession who have behaved well, merely to put others in. I have not, therefore, had a single appointment to make.

Thomas Jefferson, Apr. 13, 1790.

When I came into office, I found clerkships all filled by gentlemen who had been in them several years and who to the title of possession added that of irreproachable

conduct. I have, therefore, not had a single appointment to make.

Thomas Jefferson, Jan. 18, 1791.

It [the four years' term of office act of 1820] introduces a principle of intrigue and corruption, which will soon leaven the mass, not only of Senators, but of citizens. It is more baneful than the attempt which failed at the beginning of the government, to make all officers irremovable but with the consent of the Senate. This places, every four years, all appointments under their power, and even obliges them to act on every one nomination. It will keep in constant excitement all the hungry cormorants for office, and render them, as well as those in place, sycophants to their Senators, engage these in eternal intrigue to turn out one and put in another, in cabals to swap work; and make them what all executive directories become, mere sinks of corruption and faction.

Thomas Jefferson, Nov. 29, 1820.

You call my attention with much emphasis to the principle openly avowed by the President and his friends, that offices and emoluments were the spoils of victory, the personal property of the successful candidate for the presidency, to be given as rewards for electioneering services, and in general to be used as a means of rewarding those who support, and of punishing those who do not support the dispenser of the fund. I fully agree in all the odium you attach to such a rule of action. But I have not seen any avowal of such a principle by the President, and I suspect that few, if any, of his friends would openly avow it.

James Madison, August 29, 1834.

The politicians of the United States are not so fastidious as some gentlemen are as to disclosing the prin-

ciples on which they act. They see nothing wrong in the rule that to the victor belongs the spoils of the enemy.

W. L. Marcy, in U. S. Senate, executive session, Jan. 25, 1832.

It (the spoils system) is a detestable system, drawn from the worst periods of the Roman republic; and if it were to be perpetuated; if the offices, honors, and dignities of the people were to be put up to a scramble, to be decided by the results of every Presidential election, our government and institutions, becoming intolerable, would finally end in a despotism as inexorable as that at Constantinople.

Henry Clay, in U. S. Senate, executive session, Jan. 25, 1832.

The officer who holds during good behavior soon acquires a disposition to regard the office as his own property or estate, rather than a trust merely, which he administers, not for his own benefit, but for the benefit of the whole people. And he is not influenced by that direct sense of duty which ought to and would control him if he was more sensible of a direct accountability to public opinion. The tendency is to hold out temptations to him to abuse his trust, because he can do it with less danger of being deprived of it.

He who performs his duties well has established no special claim to future favor. He has received his full pay in the manner in which he expected to receive it, when he accepted the office whether it be a pecuniary or an honorary reward. Others are equally entitled with himself, at all times, and he has no just cause of complaint if he is required to share either honors or emoluments with others.

Ether Shepley, in U. S. Senate, Feb. 14, 1835.

The power of giving office * * * affects the fears of all who are in, and the hopes of all who are out. * * * A competition ensues, not of patriotic labors, not of rough and severe toils for the public good, not of manliness, independence, and public spirit; but of complaisance, of indiscriminate support of executive measures, of pliant subserviency and gross adulation. All throng and rush together to the altar of manworship; and there they offer sacrifices and pour out libations, till the thick fumes of their incense turn their own heads and turn also the head of him who is the object of their idolatry.

Daniel Webster, in U. S. Senate, Feb. 16, 1835.

The same party selfishness which drives good men out of office will push bad men in. Political proscription leads necessarily to the filling of offices with incompetent persons, and to a consequent mal-execution of official duties. And in my opinion, this principle of claiming a monopoly of office by the right of conquest, unless the public shall effectually rebuke and restrain it, will entirely change the character of our government. It elevates party above country; it forgets the common weal in the pursuit of personal emolument; it tends to form, it does form, we see that it has formed, a political combination, united by no common principles or opinions among its members, either upon the powers of the government or the true policy of the country; but held together simply as an association, under the charm of a popular head, seeking to maintain possession of the government by a vigorous exercise of its patronage. * * *

As far as I know, there is no civilized country on earth, in which, on a change of rulers, there is such an inquisition for spoil as we have witnessed in this free republic.

Daniel Webster, speech at Wooster, Mass., Oct. 12, 1832.

The construction for which I contend strikes at the root of that dangerous control which the President would have over all who hold office, if the power of appointment and removal without limitation or restriction were united in him. Let us not be deceived by names. The power in question is too great for the Chief Magistrate of a free state. It is in its nature an imperial power, and if he be permitted to exercise it, his authority must become as absolute as that of the autocrat of all the Russias. * * *

Let the present state of things continue — let it be understood that none are to acquire the public honors or to obtain them but by flattery and base compliance, and in a few generations the American character will become utterly corrupt and debased.

John C. Calhoun, in United States Senate,
February, 1835.

I respectfully call your attention to one abuse of long standing which I would like to see remedied by this Congress. It is the reform of the civil service of the country. * * * I would have it govern, not the tenure but the manner of making all appointments. There is no duty which so much embarrasses the Executive and heads of departments as that of appointments; nor is there any such arduous or thankless labor imposed on senators and representatives as that of finding places for constituents. The present system does not secure the best men, and often not even fit men, for public place. The elevation and purification of the civil service of the government will be hailed with approval by the whole people of the United States.

U. S. Grant, message to Congress,
December 5th, 1870.

Last year Thomas Hughes, an honored and influential member of the British Parliament, and the intimate per-

sonal and political friend of the present ministry, declared in a public address before a New York audience that he had no power to secure the appointment of even the humblest clerk in the civil service of Great Britain. It will be a proud day for our country when leading members of Congress can say the same thing for themselves in regard to civil service.

James A. Garfield, in a speech in Cincinnati, 1871.

I ask the attention of the public to the paramount necessity of reform in our civil service, a reform not merely as to certain abuses and practices of so-called official patronage, which have come to have the sanction of usage in the several departments of our government, but a change in the system of appointment itself, a reform that shall be thorough, radical, and complete; a return to the principles and practices of the founders of the government. * * *

The President of the United States of necessity owes his election to office to the suffrage and zealous labors of a political party, the members of which cherish with ardor, and regard as of essential importance, the principles of their party organization. But he should strive to be always mindful of the fact that he serves his party best who serves his country best.

Rutherford B. Hayes, in his first inaugural address.

The existing system which, for want of a better name, I call the "spoils system," must be killed or it will kill the Republic. I believe that it is impossible to maintain free institutions in this country upon any basis of that sort. I am no prophet of evil. I am not a pessimist in any sense of the word, but I do believe that, if the present system goes on until 50,000,000 people shall have grown into 100,000,000, and 140,000 officers shall have grown into 300,000, with their compensation in proportion, and all shall

depend upon the accession of one party or the other to the presidency and to the executive functions, the presidency of the country, if it shall last in name so long, will be put up for sale to the highest bidder, even as in ancient Rome the imperial crown was awarded to those who could raise the largest fund.

George H. Pendleton, in U. S. Senate,
Dec. 12, 1882.

If we are to have a just and equitable civil service reform, let it be a reform of the abuses of the party that so long wielded the power of the government and let that reform be put upon the basis that in future competitive examinations, when you ascertain the two highest, the Democrat shall be preferred until one-half the office holders are Democrats. I can see equity in that.

Joseph E. Brown, in U. S. Senate,
Dec. 12, 1882.

The use of appointments as rewards for party services did not, as it seemed, bind partisans together, after all, as the advocates of the spoils system claimed, or compact and discipline parties for aggressive and successful action. Worked out through its detail of local bosses, senatorial and congressional "influence," personal favors, the placating of enemies, and the full satisfaction of friends, it must always menace the successful party itself with factional disruption.

Woodrow Wilson, in A History of the
American People.

Civil service reform should be in good faith enforced. Our citizens have the right to protection from the incompetency of public employes who hold their places solely as the reward of partisan services, and from the corrupting influence of those who promise and the vicious meth-

ods of those who expect such rewards; and those who worthily seek public employment have the right to insist that merit and competency shall be recognized instead of party subserviency or the surrender of honest political belief.

Grover Cleveland, in first inaugural address.

The merit system is here, and it is here to stay; and we may just as well understand and accept it now, and give our attention to correcting the abuses, if any exist, and improving the law whenever it can be done to the advantage of the public service.

William McKinley, in U. S. House of Representatives, Apr. 24, 1890.

The settled judgment of discreet men in both political parties is adverse to the custom of changing non-political officers on merely political grounds. They believe that it impairs the efficiency of the public service, lowers the standard of political contests and brings reproach upon the government and the people.

James G. Blaine, in "Twenty Years in Congress."

Civil service reform, as embodied in the merit system, is simply the application to the public service of the plainest principles of common sense and common honesty.

Carl Schurz, in speech at Indianapolis, Ind., Dec. 14, 1899.

The importance and efficacy of the merit system as the only means of eradication of the spoils system, which so long worked corruption in every department of the government, is universally recognized.

Joseph H. Choate, in speech at Pittsburg, Pa., Dec. 17, 1908.

I have seen the growth of the classified service during the comparatively short period I have served in the two houses of Congress, until practically all the routine officers of the government have been placed under competitive examination, and have been removed from the dangers of political changes.

I think the establishment of that system is now beyond dispute. I do not think that anyone would propose to go back to the system which existed before 1883. I do not think that the country would endure it for a moment.
* * *

Everybody knows, that when you make the examination non-competitive, it becomes worthless.

Henry Cabot Lodge, in U. S. Senate,
Jan. 8, 1909.

As certain as the world stands the civil service system will eventuate in a life tenure of office. There is no room in a government like ours for life tenure, save and except only the judiciary, where the constitution has ordained it.

Not only must the system eventuate in a life tenure, but it must likewise eventuate in an office holding class, a class of people whose interest is apart from, and sometimes in conflict with the great interests of the American people. The interests of the men who eat the taxes is frequently contrary to the interests of the men who pay the taxes.

Not only does it mean a life tenure, and an office holding class, but those results lead inevitably to a civil pension list. I came to Congress nearly twenty years ago, and one of the first speeches I delivered was to denounce what I believed then and still believe is a sham and a humbug. I declared then that it would lead as unerringly as the night follows the day to a civil pension list.

Joseph Bailey, in U. S. Senate, Apr. 10, 1909.

We have progressed to a point where there is a large degree of efficiency in the civil service, and the best part of it is the relief which senators and members of the House have from the duties which were imposed upon them as recently as when I entered the Senate ten years ago.

Chauncey M. Depew, in U. S. Senate, Apr. 10, 1909.

The spoils system is not essential to effective party organization. On the contrary, it tends to keep out of the organization the men whose service would be most effective and to make more difficult the work of the men who take part in the organization with the real purpose of making it accomplish legitimate results. * * * The whole system is pernicious and discreditable to American citizenship. It ought to be done away with, and political parties ought to be brought back to the sole performance of their proper functions as organizations for the promotion of principles and policies, free from the control of mere office-trading combinations.

Elihu Root, in address at Yale University.

My conviction is that one of the surest paths to better politics and better government service in this country is through the enforcement of a merit system in appointments and promotions in the civil service.

William H. Taft.

From the standpoint of office, we have nothing more important in relation to the administration of government than a system — the best that has yet been devised — of securing men of needed capacity by competitive examinations wherever such examinations are practicable. I believe in that — I thoroughly endorse it — and I hope to see it extended throughout the states of the Union.

Charles E. Hughes, Associate Justice U. S. Supreme Court and former Governor of New York.

CONSTITUTIONAL PROVISION.

Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.—Article XV, Section 10.

NOTE.

The law on the following pages was approved May 28, 1915, filed with the Secretary of State June 1st, and became operative ninety days later. It differs in a number of particulars from the law of 1913, which it amends and supersedes. The most important changes are those which eliminate non-competitive examinations and substitute for a board of three commissioners a bi-partisan board of two commissioners.

These features appeared in the bill as it was introduced in the Senate by Hon. Justin A. Moore and as it passed that body. In the House a bill had been introduced by Hon. Harry C. Barnes. Both bills were referred to a committee of the House which reported Senate Bill No. 3, with material amendments as the "Barnes-Moore Bill." This passed the House and went to a conference committee, of which Mr. Moore and Mr. Barnes were members, where the bill underwent further revision. The final report of the conference committee passed both houses and was approved by the governor.

Court decisions and opinions of the attorney general on the civil service law that preceded the act of 1915 are cited when applicable to the provisions of that act.

CIVIL SERVICE LAW OF 1915.

AN ACT

To amend sections 486-1 to 486-31 inclusive, and to repeal section 4505 of the General Code relating to the Civil Service of the state of Ohio, the several counties, cities and city school districts thereof.

Be it enacted by the General Assembly of the State of Ohio:

Section 1. That sections 486-1 to 486-31 inclusive of the General Code be amended to read as follows:

Sec. 486-1. **[Definitions:]**

1. The term "civil service" includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof.

2. The "state service" shall include all such offices and positions in the service of the state or the counties thereof, except the cities and city school districts.

3. The term "classified service" signifies the competitive classified civil service of the state, the several counties, cities and city school districts thereof.

4. The term "state commission" signifies the state civil service commission of Ohio.

5. The term "municipal commission" signifies the municipal civil service commission of a city.

6. The term "appointing authority" signifies the officer, commission, board, or body having the power of ap-

pointment to or removal from positions in any office, department, commission, board or institution.

7. The term "commission" shall signify either the state civil service commission of Ohio or the civil service commission of any municipality.

8. The term "employe" or "subordinate" signifies any person holding a position subject to appointment, removal, promotion or reduction by an appointing officer.

Humane agents in the employ of a humane society, though paid from appropriations made by the state, "are in fact in the employ of a private corporation organized under the general laws of Ohio. These persons are not in the service of the state within the meaning of section 1 of the civil service act." — Atty. Gen., Apr. 24, 1914.

"The officers and employes of the Ohio State Archaeological and Historical Society do not * * * come within the provisions of the civil service act." — Atty. Gen., Apr. 24, 1914.

"County school examiners are not subject to the civil service act." — Atty. Gen., Oct. 1, 1914.

"A street commissioner as provided for in section 4363, General Code, is an officer of a village and not of a city, and the new civil service law does not apply to villages." — Atty. Gen., Dec. 27, 1913.

"Persons employed in the liquidating department of the state banking department are subject to provisions of the civil service act." — Atty. Gen., Dec. 22, 1914.

"The examiners authorized by the Torrens land registration act * * * are not subject to civil service regulations." — Atty. Gen., Oct. 1, 1914.

Sec. 486-2. [**Method of appointment.**] On and after the taking effect of this act, appointments to and promotions in the civil service of the state, the several counties, cities and city school districts thereof, shall be made only according to merit and fitness to be ascertained as far as practicable by competitive examination; and thereafter no person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted or reduced as an officer or employe in the civil service of the state, the several counties, cities and city school districts thereof, in any manner or by any means other than those prescribed in this act or by the rules of the state or municipal civil

service commissions within their respective jurisdictions as herein provided.

"The state civil service commission law does not conflict with the fourteenth amendment of the United States Constitution by denying equal protection of the law." — Green v. State Civil Service Com., 15 N. P. (N. S.) 385.

Sec. 486-3. **[Commissioners; appointment, term, vacancy, removal.]** After this act goes into effect the governor shall appoint, by and with the advice and consent of the senate, two persons of recognized character and ability to serve, one for two years and one for four years, as civil service commissioners, who shall constitute the state civil service commission of Ohio. Upon the expiration of the term of office of each commissioner so appointed, his successor shall be appointed by the governor to serve for a period of four years from the date of his appointment and until a successor is appointed and qualified. A vacancy in the office of commissioner shall be filled by the governor for the remainder of the unexpired term.

The governor may remove any member of the state civil service commission at any time for inefficiency, neglect of duty, or malfeasance in office, having first given to the commissioner a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense, and any such act or removal by the governor shall be final. A statement of the findings of the governor, the reasons for his action, and the answer, if any, of the commissioner, shall be filed by the governor with the secretary of state and shall be open to public inspection. At the time of any appointment both commissioners shall not be adherents of the same political party.

No commissioner shall hold any other office of profit or trust under the government of the United States, the state of Ohio, or any political subdivision thereof.

Sec. 486-4. **[Salaries and expenses.]** Each commissioner shall devote his entire time to the duties of his office and shall receive an annual salary of four thousand dollars, and his necessary traveling expenses incurred in the discharge of his official duties.

Sec. 486-5. **[Organization and expenses; record of proceedings and examinations.]** The governor at the time of the appointment of the commission, or member thereof, shall designate one of its members as chairman. The commission shall appoint from an eligible list to be prepared by said commission, within thirty days after its appointment, a secretary who shall be ex-officio chief examiner, whose duty it shall be, under the direction of the commission, to keep minutes of the proceedings of the commission, preserve all reports made to the commission, keep the records of all examinations, superintend the examinations, and perform such other and further duties as the commission shall prescribe. The salary of the secretary shall be not to exceed thirty-six hundred dollars per annum, to be fixed by the commission.

[Quorum.] Two members of the commission shall constitute a quorum for the transaction of business.

[Appointment of examiners, inspectors, clerks, etc.; compensation and expenses; powers and duties.] The commission may also appoint such examiners, inspectors, clerks and other assistants as may be necessary to carry out the provisions of this act, and fix their salaries within the limits of the appropriation made by the General Assembly for that purpose. The commission may designate persons in or out of the official service of the state to serve as examiners or assistants under its direction. Each such person shall receive such compensation for each day actually and necessarily spent in the discharge of his duties as examiner or assistant as shall be determined by the commission; provided, however, that if any such examiner or assistant is in the official service of the state, or any political subdivision thereof, it shall be a part of his

official duties to render such services in connection with such examinations, without extra compensation. The secretary, examiners, inspectors, clerks and assistants shall, in addition to their salaries, receive such necessary traveling and other expenses as are incurred in the actual discharge of their official duties. The commission may also incur the necessary expenses for stationery, printing and other supplies incident to the business of the department. All salaries and expenses shall be approved and allowed by the commission and paid out of the treasury of the state on the warrant of the auditor, in the same manner as the salaries and expenses of other state officers are paid.

"I am * * * of the opinion that the legislature did not intend in the use of the language quoted to do more than confine the position (secretary of state civil service commission) to the classified service and that as to the other requirements of the appointment the provisions of the general law must obtain, and that the selection must be made from the three highest candidates on said eligible list and cannot be made from the whole list." — Atty. Gen., Sept. 23, 1915.

It is the duty of the state civil service commission "to prepare the eligible list from which its secretary is to be chosen. This is to be done by competitive examination." While the members of the board may invite other disinterested citizens to participate with them they have "no right under the law to surrender all supervision or control of said examination to outside parties." — Atty. Gen., Sept. 11, 1915.

Sec. 486-6. [Rooms and accommodations.] The state commission shall maintain suitable offices in the city of Columbus; and it shall be the duty of the officers of the state, or any political subdivision thereof, at any place where examinations are directed to be held by the commission, to allow the reasonable use of public buildings and rooms and to furnish the same with heat and light, for holding such examinations, and in all proper ways to facilitate the work of the commission in carrying out the provisions of this act.

Sec. 486-7. [Powers and duties.] The commission shall,

First: [Rules and regulations.] Prescribe, amend and enforce administrative rules for the purpose of carrying out and making effectual the provisions of this act.

Second: [Records.] Keep minutes of its own proceedings and records of its examinations and other official actions. All such records, except recommendations of former employers, shall be open to public inspection under reasonable regulations; provided, however, that the governor or any person designated by him, may, for the purpose of investigation, have free access to all such records, whenever he has reason to believe that the provisions of this act or the administrative rules of the commission prescribed thereunder, are being violated.

Third: [Record of persons in classified service.] The commission shall prepare, continue and keep in its office, a complete roster of all persons in the classified service. This roster shall be open to public inspection at all reasonable hours. It shall show in reference to each of such persons, his name, address, the date of his appointment to or employment in such service, his salary or compensation, the title of the place or office which he holds, the nature of the duties thereof, and, in case of his removal or resignation, the date of the termination of such service.

Fourth: [Investigations and enforcement of provisions relating to law.] Make investigations, either sitting in banc or through a single commissioner or the chief examiner, concerning all matters touching the enforcement and effect of the provisions of this act and the administrative rules of the commission prescribed thereunder. In the course of such investigations each commissioner and the chief examiner shall have the power to administer oaths and affirmations and to take testimony relative to any matter which the commission has authority to investigate.

Fifth: [**Production of evidence; fees.**] Have the power to subpoena and require the attendance and testimony of witnesses and the production thereby of books, papers, public records and other documentary evidence pertinent to the investigations, inquiries, or hearings on appeal from the action or decision of an appointing officer as is herein authorized, and to examine them as it may require in relation to any matter which it has authority to investigate, inquire into or hear. Fees shall be allowed to witnesses, and on their certificate, duly audited, shall be paid by the state treasurer, or in the case of municipal commissions by the county treasurer, for attendance and traveling, as is provided in section 3012 of the General Code for witnesses in courts of record. All officers in the civil service of the state or any of the political subdivisions thereof and their deputies, clerks, subordinates and employes shall attend and testify when summoned so to do by the commission. Depositions of witnesses may be taken by the commission in the manner prescribed by law for like depositions in civil actions in the courts of common pleas. In case any person, in disobedience to any subpoena issued by the commission, or any of them, or their chief examiner, fails or refuses to attend and testify to any matter regarding which he may be lawfully interrogated, or produce any documentary evidence pertinent to any investigation, inquiry or hearing, it shall be the duty of the court of common pleas of any county, or any judge thereof, where such disobedience, failure or refusal occurs, upon application of the state commission, or a municipal commission, or any commissioner thereof, or their chief examiner, to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such courts or a refusal to testify therein;

Sixth: [**Hearing in matters of appeal.**] Hear appeals from the decisions of appointing officers of persons in the classified service who have been reduced in pay or

position, laid off, suspended, discharged or discriminated against by such appointing authority;

Seventh: **[Annual report.]** Make a report to the governor annually, on or before the first day of January of each year, showing its own actions, the rules and all exceptions thereto in force, and any recommendations for the more effectual accomplishment of the purposes of this act. The commission shall also furnish any special reports to the governor whenever the same are requested by him. Such reports shall be printed for public distribution, under the same regulations as are the reports of other state officers, boards or commissions.

Witness fees cannot be paid as provided in the foregoing section unless an appropriation has been made for that purpose. — Atty. Gen., October 29, 1915.

Sec. 486-8. **[Service — Classified and unclassified defined.]** The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(a) **[Positions in unclassified service.]** The unclassified service shall comprise the following positions which shall not be included in the classified service, and which shall be exempt from all examinations required in this act.

1. All officers elected by popular vote or persons appointed to fill vacancies in such offices.

2. All election officers and the employes and clerks of persons appointed by boards of deputy supervisors and inspectors of elections.

3. The members of all boards and commissions and heads of principal departments, boards and commission appointed by the governor or by and with his consent; and the members of all boards and commissions and all heads of departments appointed by the mayor, or if there be no mayor such other similar chief appointing authority of any city or city school district. Provided, however,

that nothing contained in this act shall exempt the chiefs of police departments and chiefs of fire departments of municipalities from the competitive classified service as provided in this act.

"The city engineer is not at the head of a principal department * * * and is therefore in the classified service." — Atty. Gen., Dec. 27, 1913.

"By virtue of section 1 of the act of 103 O. L. 399, the Board of Censors of Moving Picture Films is appointed with the consent of the governor. This board, therefore, comes within the terms of subdivision 2 (now 3) of section 8 of the civil service act, and the members thereof are in the unclassified service." — Atty. Gen., Apr. 29, 1914.

4. The members of county or district licensing boards or commissions, and boards of revision and assistant assessors.

5. All officers and employes elected or apointed by either or both branches of the general assembly, and such employes of the city council as are engaged in legislative duties.

6. All commissioned, non-commissioned officers and enlisted men in the military service of the state including military appointees in the offices of the adjutant general.

7. All presidents, directors, superintendents, principals, instructors and teachers connected with the public school system, colleges and universities; and the library staff of any library in the state supported wholly or in part at public expense.

"The term 'library staff' does not necessarily mean all the employes of the library and if the legislature had intended to exempt all the employes of the library it could have easily so expressed it. The term 'library staff' includes those employes who have to do with the handling of the books. It means something more than a janitor or a porter." — Atty. Gen., Dec. 8, 1914.

8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistant or clerks and one per-

sonal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer.

"The position of state registrar of vital statistics, under the act of 1913, was in the classified service." — Atty. Gen., Jan. 16, 1915.

"The county liquor licensing board is entitled to one secretary and one clerk, or to two clerks in the unclassified service." — Atty. Gen., June 12, 1914.

"There is no head of a sub-department that can be classed as a 'principal executive officer' under sub-division 7 (now 8) of the civil service act, nor any other position, the incumbent of which is in the classified service, that can have two (now three) assistants or secretaries or clerks in the unclassified service." — Atty. Gen., Dec. 23, 1913.

"It being apparent that neither in the general statutes nor in the appropriation bills is the state armory board given authority to appoint or employ any subordinates whatever, it follows that the state armory board is not 'authorized by law to appoint such secretary, assistant or clerk and stenographer' within the meaning of paragraph 8 of section 486-8 of the General Code." — Atty. Gen., Sept. 16, 1915.

9. The deputies of elective or principal executive officers authorized by law to act for and in the place of their principals and holding a fiduciary relation to such principals.

"Deputy oil inspectors, under the present law, are not in the classified service.

"The deputy highway commissioners are deputies under the civil service act and are in the unclassified service.

"Deputy clerks in the office of a probate judge are deputies under the civil service act, and as such are in the unclassified service." — Atty. Gen., Sept. 12, 1914.

"The city sealer of weights and measures is in the unclassified service and the deputy county sealer of weights and measures is also in the unclassified service. The assistant city sealers of weights and measures are in the classified service." — Atty. Gen., June 29, 1914.

The assistant secretary of state comes within the definition of a deputy and, "therefore, is in the unclassified service and is not to be deemed or counted as one of the two assistants, clerks or secretaries that may be selected by the elective officer." - Atty. Gen., Jan. 16, 1915.

"The first and second deputy fire marshals are held to be deputies under the civil service act. The fire marshal may have two assistants or two clerks, or one clerk and one assistant in the unclassified service under the civil service act of 1913. All others are in the classified service." — Atty. Gen., Oct. 6, 1914.

"The deputy inspectors act generally for and in place of the chief inspector and supervisor of public offices. In order to be a deputy it is not necessary that the deputy act for the state auditor in all things. In the present case the deputy inspectors act for and in place of their principal as to the duties of the Bureau of Inspection and Supervision of Public Offices. This makes them deputies within the meaning of the civil service act." — Atty. Gen., Nov. 5, 1914.

"The secretary to the governor, the executive clerk, the stenographer to the governor and all other employes, who from the nature of the service rendered or by reason of their location to the governor's office are in position to observe the transactions or to obtain information relative to matters that may legally come before the governor, are not within the classified service, for the reason that it is impractible to determine their merit and fitness by competitive examination." — Atty. Gen., Jan. 16, 1915.

Assistants of the chief inspector and supervisor of public offices are held to be assistants and not deputies, and hence under the civil service, for "it cannot be determined as a matter of law that it is impracticable to hold competitive examinations of applicants for the positions of state examiners in the Bureau of Inspection and Supervision of Public Offices. The question of practicability of examinations should be determined by the state civil service commission." — Atty. Gen., May 28, 1914.

"Deputy fire marshals are not within the description of paragraph 8 (now 9) of the present civil service law, except as to the first deputy, any more than are the assistant fire marshals, but such deputy fire marshals are the incumbents of confidential positions, just as are the assistant fire marshals, and the civil service commission may determine whether it is practicable to ascertain the merit and fitness of applicants therefore by competitive examinations." — Atty. Gen., Aug. 7, 1915.

"Deputies must be authorized by law to act generally for and in place of their principals, and they may hold a fiduciary relation to such principals. Both of these conditions must exist." The fact that this board delegates to certain of its officers, powers to purchase supplies, to award contracts, to classify prisoners and to act for it in other matters of a general and special nature, "does not make the managing officers deputies of the board of Administration. * * * They do not act in the name of their principal, the Board of Administration. In many instances they may act as agents of the board, but this does not make them deputies. The managing officers in

question are not deputies within the meaning * * * of the civil service act." — Atty. Gen., May 28, 1914.

10. Bailiffs, constables, official stenographers and commissioners of courts of record, and such officers and employes of courts of record as the commission may find it impracticable to determine their fitness by competitive examination.

11. Assistants to the attorney-general, special counsel appointed or employed by the attorney-general, assistants to county prosecuting attorneys and assistants to city solicitors.

"A secret service officer appointed by the prosecuting attorney is not in the classified service under the civil service law." — Atty. Gen., Dec. 27, 1913.

12. Such teachers and employes in the agricultural experiment stations; such teachers in the benevolent, penal or reformatory institutions of the state; such student employes in normal schools, colleges and universities of the state; and such unskilled labor positions as the state commission or any municipal commission may find it impracticable to include in the competitive classified service; provided, that such exemptions shall be by order of the commission, duly entered on the record of the commission with the reasons for each such exemption.

The tendency of the New York courts is not to disturb the decision of the civil service commission when it determines that it is practicable to hold competitive examinations. It has overruled the commission when it has placed certain positions in the exempt class. In no case, it is declared, have the New York courts held that as a matter of law it is impracticable to hold competitive examinations. "The constitution and statutes of New York as to the practicability of holding competitive examinations are almost identical with the constitution and statutes of Ohio on the same subject." — Atty Gen., May 28, 1914.

(b) **[Positions in classified service.]** The classified service shall comprise all persons in the employ of the

state, the several counties, cities and city school districts thereof, not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class.

"County infirmary superintendents and matrons are in the classified service and subject to examination." — Atty. Gen., Mar. 18, 1914.

"The members of the District Board of Complaints are in the unclassified service." — Atty. Gen., Apr. 29, 1914.

Sanitary police were held in the civil service under the Payne amendment. Gollwitzer v. Cleveland, 21 Dec. 423 (11 N. S. 449).

Local registrars of vital statistics are "in the classified service and are under the jurisdiction of the state civil service commission." — Atty. Gen., Dec. 31, 1914.

"The superintendent or other managing officer of the various institutions under the management and control of the Board of Administration are not placed in the unclassified service by section 8 of the civil service act, and the practicability of holding competitive examinations of applicants for such positions shall be determined by the state civil service commission." — Atty. Gen., May 28, 1914.

1. The competitive class shall include all positions and employments now existing or hereafter created in the state, the counties, cities and city school districts thereof, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer or reduction, as provided in this act, and the rules of the commission, by appointment from those certified to the appointing officer in accordance with the provisions of this act.

"No hard and fast rule may be laid down to govern every instance which may arise. The presumption, however, is that all positions, except those specifically exempted in the act, are within the competitive classified service" unless the civil service commission "specifically finds that it is not practicable to determine the merit and fitness of the candidates for the particular position by competitive examination." — Atty. Gen., Sept. 13, 1915.

2. The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class shall be

filled by appointment from lists of applicants registered by the commission. The commission shall in its rules require an applicant for registration in the labor class to furnish such evidence or take such tests as it may deem proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity and experience in the work or employment for which he applies. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought and preference shall be given in employment in accordance with the rating received from such evidence or in such tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the commission shall certify from the highest on the list, double the number to be employed, from which the appointing officer shall appoint the number actually needed for the particular work. In the event of more than one applicant receiving the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

Sec. 486-9. [Rules and classification.] As soon as practicable after the taking effect of this act, the commission shall put into effect rules for the classification of offices, positions and employments, in the civil service of the state and the several counties thereof; for appointment, promotions, transfers, lay-offs, suspensions, reductions, reinstatements and removals therein and examinations and registrations therefor; and for maintaining and keeping records of the efficiency of officers and employes in accordance with the provisions of this act. Due notice of the contents of such rules and of all changes therein shall be given to appointing officers affected thereby, and such rules shall also be printed for public distribution: provided, however, that until such rules are adopted and in force, the rules existing when this law takes effect shall continue in force.

"The power of the civil service commission to classify positions is subject to a limited judicial control. As to some positions it can be determined as a matter of law that it is impracticable to hold examinations therefor. Where this is doubtful it is left to the determination of the civil service commission." — Atty. Gen., May 28, 1914.

Sec. 486-10. [**Examinations. Exception as to soldiers and sailors.**] All applicants for positions and places in the classified service shall be subject to examination which shall be public, competitive and free for all, within certain limitations, to be determined by the commission, as to citizenship, residence, age, sex, experience, health, habits and moral character: provided, however, that any soldier, sailor or marine who has served in the army or navy of the United States in the War of the Rebellion who was honorably discharged therefrom and is a resident of Ohio, may file with the civil service commission a certificate of service and honorable discharge, whereupon his name shall be placed upon an eligible list by the commission, from which eligible list he may be appointed to any position in the civil service of the state which such appointing power may deem him qualified to fill. Such examinations shall be practical in character and shall relate directly to those matters which will fairly test the relative capacity of the person examined to discharge the particular duties of the position for which appointment is sought, and shall, when appropriate, include tests of physical qualifications, health and manual skill.

[**Notice of time and place of examination.**] The state commission shall have control of all examinations, except as otherwise provided in this act. No questions in any examination shall relate to political or religious opinions or affiliations. Reasonable notice of the time and place and general scope of every competitive examination for appointment to a position in the civil service, except as otherwise provided for in this act, shall be given by the commission. Written or printed notices of every examination for the state classified service shall be sent by the

commission to the county clerk of each county in the state, and to the city clerk of each municipality of the state, and such notices, promptly upon receipt by them, shall be posted in conspicuous public places in the court house of the county and in the city hall of the municipality, respectively. Such notices shall also be posted in a conspicuous place in the office of the commission for at least two weeks before any examination. In case of examinations limited by the commission to a district, county or city, the commission shall provide in its rules for adequate publicity of such examinations in the district, county or city, within which competition is permitted.

"The last paragraph of § 10 of the civil service act (103 O. L. 698, G. C., 486-10) continuing incumbents in office, is not void as an exercise of the appointing power nor as a general law without uniform operation; nor as violating the constitutional requirement of a civil service; nor as creating a privileged class, for it is not for their benefit, but in the public interest." — State v. Fosdick, 15 N. P. (N. S.) 337.

"The act of May 10, 1913 (103 O. L. 698), in so far as relating to incumbents in par. 3 of § 10, went into effect January 1, 1914." — State v. Schneller, 15 N. P. (N. S.) 438.

A valveman under the former civil service law was in the unskilled class, hence his appointment by the director of public service was legal. Therefore, when the present act (103 O. L. 698) took effect, he was an incumbent and entitled to remain and receive pay subject to a non-competitive examination when required by the commission. The twelve months' time* in section 10 does not limit his continuance when the commission has not held any examination (reverses 12 O. L. R. 204). State v. Keefer, 20 C. C. (N. S.) 417.

"The persons occupying the positions of chief of police and chief of the fire department of a city on January 1, 1914, are not required to take an examination, either competitive or non-competitive, as a condition of their continuance in office." — Atty. Gen., Mar. 23, 1914.

The provisions of the civil service act exclude consideration of party affiliations and repeal by implication "the provision of section 1182 of the General Code that not more than sixty per cent of the appointees shall be of the same political party. * * * The three deputy highway commissioners and two assistants or clerks or secretaries, or one of any two, are in the unclassified service. All

* This time limitation is not in the present law.

other employes of the highway department are in the classified service. The question of the practicability of holding competitive examinations to determine the merit of applicants is for the civil service commission to determine." — Atty. Gen., Aug. 6, 1914.

Sec. 486-11. [Applications; statements required in application.] The commission shall require persons applying for admission to any examination, provided for by this act or by the rules of the commission prescribed thereunder, to file with the commission within a reasonable time prior to the proposed examination a formal application in which the applicant shall state under oath or affirmation:

(1) Full name, residence and postoffice address.

(2) Nationality, age and place and date of birth.

(3) Health and physical capacity for the public service sought.

(4) Business and employments and residences for five previous years.

(5) Such other information as may be reasonably required touching the applicant's merit and fitness for the public service sought; but no inquiry shall be made as to any religious or political opinions or affiliations of the applicant.

[Examination fee.] No fee or other assessment shall be charged for examination for positions, provided for by this act or by the rules of the commission prescribed thereunder, where the annual salary does not exceed six hundred dollars; for positions where the annual salary exceeds six hundred dollars and is less than one thousand dollars, an examination fee of fifty cents shall be charged; for positions where the annual salary is one thousand dollars or more, an examination fee of one dollar shall be charged. All fees collected under the provisions of this act shall be paid into the state treasury to the credit of the general revenue fund, or in the case of cities into the city treasury.

[Blank forms; grounds for refusal to certify eligible.] Blank forms for applications shall be furnished by the commission without charge to any persons requesting the same. The commission may require in connection with such application such certificate of persons having knowledge of the applicant as the good of the service may demand. The commission may refuse to examine an applicant, or after an examination to certify an eligible, who is found to lack any of the established preliminary requirements for the examination or who is physically so disabled as to be rendered unfit for the performance of the duties of the position which he seeks, or who is addicted to the habitual use of intoxicating liquors or drugs to excess, or who has been guilty of any crime or of infamous or notoriously disgraceful conduct, or who has been dismissed from either branch of the civil service for delinquency or misconduct, or who has made false statements of any material fact, or practiced, or attempted to practice, any deception or fraud in his application or in his examination, in establishing his eligibility or securing his appointment.

Sec. 486-12. [Eligible lists.] From the returns of the examinations the commission shall prepare an eligible list of the persons whose general average standing upon examinations for such grade or class is not less than the minimum fixed by the rules of the commission and who are otherwise eligible; and such persons shall take rank upon the eligible list as candidates in the order of their relative excellence as determined by the examination without reference to priority of time of examination. In the event of two or more applicants receiving the same mark in an examination, priority in the time of application shall determine the order in which their names shall be placed on the eligible list. The term of eligibility of each list shall be fixed by the commission at not less than one year nor more than two years. When an eligible list is reduced to three names or less a new list shall be prepared.

Sec. 486-13. [Appointments.] The head of a department, office or institution in which a position in the classified service is to be filled shall notify the commission of the fact, and the commission shall, except as provided in sections 486-14 and 486-15 of the General Code, certify to the appointing officer thereof the names and addresses of the three candidates standing highest on the eligible list for the class or grade to which said position belongs. In the event that an eligible list becomes exhausted, through inadvertence or otherwise, and until a new list can be created, or when no eligible list for such position exists, names may be certified from eligible lists most appropriate for the group or class in which the position to be filled is classified. A person certified from an eligible list more than three times to the same appointing officer for the same or similar positions, may be omitted from future certification to such officer, provided that certification for a temporary appointment shall not be counted as one of such certifications.

Appointments to all positions in the classified service, as herein defined, that are not filled by promotion, transfer or reduction, as provided for in this act and the rules of the commission prescribed thereunder, shall be made only from those persons whose names are certified to the appointing officer in accordance with the provisions of this act, and no employment, except as provided in this act, shall be otherwise given in the classified service of this state or any political sub-division thereof. The appointing officer shall notify the commission of each position to be filled and shall fill such position by appointment of one of the three persons certified to him as provided in this act. Forthwith, upon such appointment and employment, each appointing officer shall report to the proper civil service commission the name of such appointee or employe, the title and character of his office, the duties of same, the date of the commencement of same, and the salary or compensation thereof, and such other information as the

commission requires in order to keep the roster herein mentioned. All original and promotional appointments shall be for a probationary period of not to exceed three months to be fixed by the rules of the commission, and no appointment or promotion shall be deemed finally made until the appointee has satisfactorily served his probationary period. At the end of the probationary period the appointing officer shall transmit to the commission a record of the employe's service, and if such service is unsatisfactory, the employe may, with the approval of the commission, be removed or reduced without restriction; but dismissal or reduction may be made during such period as is provided for in section 486-17 and 486-17a of the General Code. Any person who is appointed to a position in the classified service under the provisions of this act, except temporary and exceptional appointments, shall be or become forthwith a resident of the state.

"The chief of police of a city is in the classified service under the civil service law." — Atty. Gen., Oct. 1, 1914.

"The members of council should select from the names submitted by the civil service commission, one of them to be clerk of council." — Atty. Gen., Apr. 29, 1914.

The new civil service law, (Sec. 486-8 (a) 5 modifies the old law and exempts from the civil service "employes of the city council * * * engaged in legislative duties."

Director of public service is required to certify vacancy to civil service commission before merit system is in full operation. — Lea v. State 34 O. C. C. 672 (15 N. S. 28).

Sec. 484[6]-14. [**Temporary and exceptional appointments.**] Positions in the classified service may be filled without competition as follows:

1. Whenever there are urgent reasons for filling a vacancy in any position in the classified service and the commission is unable to certify to the appointing officer, upon requisition by the latter, a list of persons eligible for appointment after a competitive examination, the appointing officer may nominate a person to the commission for

non-competitive examination, and if such nominee shall be certified by the commission as qualified after such non-competitive examination, he may be appointed provisionally to fill such vacancy until a selection and appointment can be made after competitive examination; but such provisional appointment shall continue in force only until regular appointment can be made from eligible lists prepared by the commission, and such eligible lists shall be prepared within ninety days thereafter. In case of an emergency an appointment may be made without regard to the rules of this act, but in no case to continue longer than thirty days, and in no case shall successive appointments be made: provided, however, that interim or temporary appointments, made necessary by reason of sickness or disability of regular officers, employes or subordinates shall continue only during such period of sickness or disability, subject to rules to be provided for by the commission.

2. In case of a vacancy in a position in the classified service where peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character are required, and upon satisfactory evidence that for specified reasons competition in such special case is impracticable and that the position can best be filled by a selection of some designated person of high and recognized attainments in such qualities, the commission may suspend the provisions of the statute requiring competition in such case, but no suspension shall be general in its application to such place, and all such cases of suspension shall be reported in the annual report of the commission with the reasons for the same.

3. Where the services to be rendered by an appointee are for a temporary period, not to exceed one month, and the need of such service is important and urgent, the appointing officer may select for such temporary service any person on the proper list of those eligible for permanent appointment. Successive temporary ap-

pointments to the same position shall not be made under this provision. The acceptance or refusal by an eligible of a temporary appointment shall not affect his standing on the register for permanent employment; nor shall the period of temporary service be counted as a part of the probationary service in case of subsequent appointment to a permanent position.

"G. C., § 486-14, empowering the civil service commission to appoint without competitive examination when scientific or professional qualifications are required, is not a grant of power to suspend a law." — [Const., Art. 1, § 18.] Green v. State Civil Service Com., 15 N. P. (N. S.) 385.

"Failure of the director of public service to notify the commission of a vacancy as required by G. C., § 4481, is not a condition precedent to a valid temporary appointment by the mayor." — State v. Keefer, 16 N. P. (N. S.) 145, 151.

"The extraordinary exigency or impending stoppage of public business required to authorize a temporary appointment by the mayor need not be proved by the appointee, being a burden impossible to sustain at all seasons, and therefore will be presumed until impeached."—State v. Keefer, 16 N. P. (N. S.) 145, 148.

"Temporary appointments in classified service terminate upon organization of civil service commission." — State v. Lea, 20 Dec. 569 (10 N. S. 364).

Sec. 486-15. **[Promotions; examinations.]** Vacancies in positions in the classified service shall be filled in so far as practicable by promotions. The commission shall provide in its rules for keeping a record of efficiency for each employe in the classified service, and for making promotions in the classified service on the basis of merit, to be ascertained as far as practicable by promotional examinations, by conduct and capacity in office, and by seniority in service; and shall provide that vacancies shall be filled by promotion in all cases where, in the judgment of the commission, it shall be for the best interest of the service so to fill such vacancies. All examinations for promotions shall be competitive. In promotional examinations efficiency and seniority in service shall form a part of the maximum mark attainable in such

examination. In all cases where vacancies are to be filled by promotion, the commission shall certify to the appointing authority only the name of the person having the highest rating. The method of examination for promotions, the manner of giving notice thereof, and the rules governing the same shall be in general the same as those provided for original examinations, except as otherwise provided herein.

The civil service commission "cannot hold a promotional examination, where, under the rules of the commission, only one person is entitled to take such examination. The rule or classification should be broadened so as to make it possible for more than one person to take a promotional examination." — Atty. Gen., Dec. 28, 1914.

"The commission, having determined that a police corporal is eligible to examination for promotion, and he having obtained such promotion accordingly, the commission or its successor is without power to reverse such decision. The commission, having reported the corporal as eligible for examination, though he had not been a corporal for two years, as required by their rules, will be deemed to have suspended the rule, which it had power to do."—State v. Keefer, 20 C. C. (N. S.) 366.

Where a promotional examination was held for the position of superintendent of the State School for the Blind and the person receiving the highest grade was not appointed by the Board of Administration, the Supreme Court held that it was not necessary to appoint such person. The opinion of the Court has not yet been prepared. It was understood at the time, however, that the decision was grounded upon the second of the four reasons * * * stated, namely, that the position of superintendent of a state institution is not one an examination for which may lawfully be restricted to applicants in any line of promotion, but that it should be thrown open to general competition. — Atty. Gen., Oct. 14, 1915.

Sec. 486-16. [**Transfers and reinstatements.**] With the consent of the commission, a person holding an office or position in the classified service may be transferred to a similar position in another office, department or institution having the same pay and similar duties; but no transfer shall be made from an office or position in one class to an office or position in another class, nor shall a person be transferred to an office or position for original

entrance to which there is required by this act, or the rules adopted pursuant thereto, an examination involving essential tests or qualifications or carrying a salary different from or higher than those required for original entrance to an office or position held by such person.

Any person holding an office or position under the classified service who has been separated from the service without delinquency or misconduct on his part may, with the consent of the commission, be reinstated within one year from the date of such separation to a vacancy in the same or similar office or position in the same department; and whenever any permanent office or position in the classified service is abolished or made unnecessary, the person holding such office or position shall be placed by the commission at the head of an appropriate eligible list, and for a period of not to exceed one year shall be certified to an appointing officer as in the case of original appointments.

"Cities are sometimes compelled to reduce the number of positions and this makes it necessary to discharge employes who are efficient. It is an unfortunate situation for those who are discharged but someone must be discharged. * * * In making reductions the appointing authority may choose whom he shall retain regardless of the time of service or time of appointment. He may take into consideration other things in addition to seniority of service. He is not required to consider solely the seniority of service." — Atty. Gen., June 13, 1914.

In support of this view, the attorney-general quotes from State ex rel. vs. Searsy, Mayor, 21 Cir. 83.

Sec. 486-17. **[Reductions, lay-offs and suspensions.]** No person shall be reduced in pay or position, laid off, suspended, discharged or otherwise discriminated against by an appointing officer for religious or political reasons or affiliations. In all cases of reduction, lay-off or suspension of an employe or subordinate, whether appointed for a definite term or otherwise, the appointing authority shall furnish such employe or subordinate with a copy

of the order of lay-off, reduction or suspension and his reasons for the same, and give such employe or subordinate a reasonable time in which to make and file an explanation. Such order together with the explanation, if any, of the subordinate shall be filed with the commission. Nothing in this act contained shall limit the power of an appointing officer to suspend without pay, for purposes of discipline, an employe or subordinate for a reasonable period, not exceeding thirty days; provided, however, that successive suspensions shall not be allowed, and provided further that the provisions of this section shall not apply to temporary and exceptional appointments made under the authority of section 486-14 of the General Code.

"Where an employe in the classified civil service is removed by the director of public service (G. C., § 486-17; 103 O. L. 747), the court when applied to for re-instatement can only inquire whether the charge or reasons were ground for removal and whether they were made in good faith and not as a sham to get rid of the employe but the court cannot try the merits of the charge (except as determining good faith) because official judgment cannot be controlled by the courts except in the absence of good faith."—State v. Fosdick, 15 N. P., (N. S.) 630.

"Where the discharge of an employe is legal on the grounds assigned it does not become unlawful because in addition it was desired to get rid of the employe on political grounds."—State v. Fosdick, 15 N. P. (N. S.) 630, 640.

"Charges upon which a policeman is tried and discharged by the director of public safety and the civil service commission must be such as to sustain the judgment as in a civil action, and if indefinite and trivial or not such as are recognized by the law or the rules of the department, the discharge is void, but if any of these charges are sufficient, the court cannot enquire if they were sustained, for the jurisdiction of the commissioner is final, and not reviewable." — State v. Cleveland, 20 C. C. (N. S.) 250.

Member of sanitary police defined as to removal under civil service regulations. — Gollwitzer v. Cleveland, 21 Dec. 423 (11 N. S. 449).

Sec. 486-17a. [Tenure of office. Removals.] The tenure of every officer, employe or subordinate in the classified service of the state, the counties, cities and city school districts thereof, holding a position under the pro-

visions of this act, shall be during good behavior and efficient service; but any such officer, employe or subordinate may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office.

In all cases of removal the appointing authority shall furnish such employe or subordinate with a copy of the order of removal and his reasons for the same, and give such officer, employe or subordinate a reasonable time in which to make and file an explanation. Such order with the explanation, if any, of the employe, or subordinate shall be filed with the commission. Any such employe or subordinate so removed may appeal from the decision or order of such appointing authority to the state or municipal commission, as the case may be, within ten days from and after the date of such removal, in which event the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm or modify the judgment of the appointing authority, and the commission's decision shall be final; provided, however, that in the case of the removal of a chief of police or chief of the fire department of a municipality an appeal may be had from the decision of the municipal commission to the court of common pleas of the county in which such municipality is situated to determine the sufficiency of the cause of removal. Such appeal shall be taken within ten days from the finding of the commission.

Sec. 486-18. [Efficiency. Establishment of grades.] The commission shall from time to time make investigations for the purpose of ascertaining the duties imposed by law and practice upon each officer and employe or

subordinate in the classified service, the manner in which such duties are performed, the cost thereof, and such other facts as will enable the commission to determine the efficiency of such officers and employes and subordinates. The commission shall establish grades in the classified service, based upon similarity of duties and salaries; shall standardize employment in each grade; shall prescribe factors or quantities to be used in marking the relative efficiency of each officer and employe or subordinate in such grades; shall fix standards of efficiency to be maintained by officers and employes or subordinates; and shall keep a record of the efficiency markings for each officer and employe or subordinate in the classified service.

[Duties of officers and employes; efficiency records.] All officers and employes or subordinates in the state, the several counties, cities and city school districts thereof, whether in the classified service or not, shall promptly and correctly report to the commission any information required by the rules of the commission relative to the conduct, capacity, and efficiency of any officer, employe or subordinate in the classified service under his supervision. The records, reports and markings of efficiency in each department, office and institution shall be open at all times to inspection by the commission and shall be subject to review and correction by the commission. The efficiency records of the commission respecting each department, board, commission, or institution; shall be open to the heads of such department, board, commission or institution; and each officer and employe or subordinate shall have the right to be informed of the efficiency markings recorded for him by the commission.

The commission shall report to the officer in charge of a department, board, commission or institution its findings and recommendations relative to increasing the efficiency therein; and all cases of failure of officers, employes or subordinates therein to maintain a satisfactory efficiency record, shall be sufficient ground for the dis-

missal of any such officer, employe or subordinate. Such reports shall be deemed public records.

Sec. 486-19. [Municipal civil service. Commission; appointment, term, duties, vacancies, removals.] The mayor or other chief appointing authority of each city in the state shall appoint three persons, one for a term of two years, one for four years, and one for six years, who shall constitute the municipal civil service commission of such city and of the city school district in which such city is located; provided, however, that members of existing municipal commissions shall continue in office for the terms for which they have been appointed and until their successors are appointed and have qualified. Each alternate year thereafter the mayor or other chief appointing authority shall appoint one person, as successor of the member whose term expires, to serve six years and until his successor is appointed and qualified. A vacancy shall be filled by the mayor or other chief appointing authority of a city for the unexpired term. At the time of any appointment not more than two commissioners shall be adherents of the same political party. Such municipal commission shall prescribe, amend and enforce rules not inconsistent with the provisions of this act for the classification of positions in the civil service of such city and city school district; for examinations and registrations therefor; and for appointments, promotions, removals, transfers, lay-offs, suspensions, reductions and reinstatements therein; and for standardizing positions and maintaining efficiency therein. Said municipal commission shall have and exercise all other powers and perform all other duties with respect to the civil service of such city and city school district, as herein prescribed and conferred upon the state civil service commission with respect to the civil service of the state; and all authority granted to the state commission with respect to the service under its jurisdiction shall, except as otherwise provided in this act, be held to grant the same authority to the municipal

commission with respect to the service under its jurisdiction. The procedure applicable to reductions, suspensions and removals, as provided for in section 486-17 and 486-17a of the General Code, shall govern the civil service of municipalities. The expense and salaries of any such municipal commission shall be determined by the council of such city and a sufficient sum of money shall be appropriated each year to carry out the provisions of this act in such city.

If the appointing authority of any such city fails to appoint a civil service commission or commissioner, as provided by law, within sixty days after he has the power to so appoint, or after a vacancy exists, the state commission shall make the appointment, and such appointee shall hold office until the expiration of the term of the appointing authority of such city and until the successor of such appointee is appointed and qualified. If any such municipal commission fails to prepare and submit such rules and regulations in pursuance of the provisions of this act within six months after this act goes into effect, the state commission shall forthwith make such rules. The provisions of this act shall in all other respects, except as provided in this section, be in full force and effect in such cities.

It shall be the duty of each municipal commission to make reports from time to time, as the state commission may require, of the manner in which the law and the rules and regulations thereunder have been and are being administered, and the results of their administration in such city and city school district. A copy of the annual report of each such municipal commission shall be filed in the office of the state commission as a public record.

Whenever the state commission shall have reason to believe that a civil service commission of any city is violating or is failing to perform the duties imposed upon it by law, or that any member of such municipal commission is wilfully or through culpable negligence violating the

provisions of the law or failing to perform his duties as a member of such commission, it may institute an investigation, and if it shall find any such violation or failure to perform the duties imposed by law, it shall make a report of such violation in writing to the chief executive authority of such city, which report shall be a public record. The chief executive authority of such city may at any time remove any municipal civil service commissioner for inefficiency, neglect of duty, or malfeasance in office, having first given to such commissioner a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense, and any such act of removal shall be final.

The mayor shall have the exclusive right to suspend the chief of the police department or the chief of the fire department for incompetence, gross neglect of duty, gross immorality, habitual drunkenness, failure to obey orders given him by the proper authority or for any other reasonable and just cause. If either the chief of police or chief of the fire department is so suspended the mayor forthwith shall certify such fact, together with the cause of such suspension, to the municipal civil service commission, who within five days from the date of receipt of such notice shall proceed to hear such charges and render judgment thereon, which judgment may affirm, disaffirm or modify the judgment of the appointing officer, and an appeal may be had from the decision of the commission to the court of common pleas as is provided for in section 486-17a of the General Code to determine the sufficiency of the cause of removal.

"G. C., § 486-19, giving a city civil service commission the same powers in the city that the state commission has over its jurisdiction, does not limit the state commission's power to territory outside the state, and it may investigate the mayor of a city. And construing the act with G. C., § 4477, the power is co-extensive with the date of the act." — Green v. State Civil Service Com., 15 N. P. (N. S.) 385.

This point reversed in 90 O. S.

"If the authority to appoint is lost by reason of the expiration of sixty days without such authority being exercised, it is not restored by reason of a change in the incumbency of the office. The loss of authority to make such appointment is a loss to the office itself and not to the person who happens to occupy the office for the time being."

State ex rel. Bailey vs. George et al. Court of Appeals, Muskingum Co.

See attorney general's opinion relative to the appointment of a municipal civil service commission by the mayor within sixty days after the taking effect of the civil service act, Dec. 27, 1913.

"The provisions of * * * the civil service act requiring council to fix salaries of the commissioners and to appropriate money for the expenses of the commission are mandatory, that is, council may be required to act. The courts cannot control the discretion of council as to the amount of the salary or as to what is reasonably sufficient for such expenses." — Atty. Gen., Apr. 24, 1914.

"Under * * * the civil service act, supra, the municipal civil service commission as to the service under its jurisdiction is granted the same power and authority as the state civil service commission has as to the state civil service. This provision has reference to the power and authority over the positions in the classified service and those making appointments to the classified service. It does not grant to the municipal civil service commission the power to fix the salaries of the examiners, physicians and clerks of such municipal civil service commission. The council has the power to fix the salaries of the employes of the municipal civil service commission." — Atty. Gen., Aug. 18, 1914.

"Power of mayor to remove chief of police not repealed by implication of act 99 O. L. 562, but he must be removed subject to trial by civil service commission." — Karb v. State, 87 O. S. 197.

"De facto chief of police subject to removal same as de jure officer. Chief appointed from unclassified service not subject to summary removal." — Karb v. State, 87 O. S. 197.

"Civil service employes in the police and fire departments have no definite term of office within the statutory inhibition against change of salary during term." — Stage v. Coughlin, 22 Dec. 211 (12 N. S. 419).

Sec. 486-20. **[Civil service districts.]** For the purpose of administration the state civil service commission may divide the state into civil service districts and establish an officer in each of such districts. The commission may place in charge of each such district an assistant whose duties and compensation shall be determined and fixed by the rules of the commission.

"If §§ 20, 21 and 28 of the state civil service commission law are invalid, the rest of the act is not involved thereby. — Green v. State Civil Service Com., 15 N. P. (N. S.) 385.

Sec. 486-21. [Pay rolls.] After the taking effect of this act it shall be unlawful for the auditor of state, or for any fiscal officer of any county, city or city school district thereof, to draw, sign or issue or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of the state, or of any county, city or city school district thereof, to pay any salary or compensation to any officer, clerk, employe, or other person in the classified service unless an estimate, payroll or account for such salary or compensation containing the name of each person to be paid, shall bear the certificate of the state civil service commission, or, in case of the service of a city, the certificate of the municipal service commission of such city, that the persons named in such estimate, payroll or account have been appointed, promoted, reduced, suspended, or laid off or are being employed in pursuance of this act and the rules adopted thereunder.

Any sum contrary to the provisions of this section may be recovered from any officer or officers making such payment in contravention of the provisions of law and of the rules made in pursuance of law; or from any officer signing or countersigning or authorizing the signing or countersigning of any warrant for the payment of the same, or from the sureties on his official bond, in an action in the courts of the state, maintained by a citizen resident therein. All moneys recovered in any action brought under the provisions of this section must, when collected, be paid into the treasury of the state or appropriate civil division thereof, except that the plaintiff in any action shall be entitled to recover his own taxable costs of such action.

"The deputy city auditor cannot also hold the position of secretary to the municipal civil service commission." — Atty. Gen., Mar. 20, 1914.

Sec. 486-22. [Investigations.] Whenever a civil service commission shall have reason to believe that any officer, board, commission, head of a department, or person having the power of appointment, lay-off, suspension or removal, has abused such power by making an appointment, lay-off, reduction suspension, or removal in violation of the provisions of this act, it shall be the duty of the commission to make an investigation, and if it shall find that such violation of the provisions or the intent and spirit of this act has occurred, it shall make a report thereof to the governor, or in the case of a municipal officer or employe to the mayor or other chief appointing authority, who shall have the power to remove forthwith such guilty officer, board, commission, head of department, or person; an opportunity first having been given to such officer, employe or subordinate of being publicly heard in person or by counsel in his own defense, and such action of removal by the governor, mayor or other chief appointing authority shall be final except as otherwise provided herein.

The director of public service of Sandusky, Ohio, discharged two men, who appealed to the court of common pleas for reinstatement. In deciding that the court of common pleas was without authority to review the act of an administrative officer in civil service cases, the common pleas judge said in part:

"For the purpose of this decision it will be assumed as a fact, though distinctly not found by the court to be true, that these men were discharged for 'purely political reasons.' The court assumes this allegation to be true because of the view the court takes of this law. It is the opinion of the court that even though the public service director may have dismissed them for 'purely political reasons' this court has no power, authority or jurisdiction to control the conduct of the public service director by mandamus, or in any other way, and no authority to hear or determine this question."

"A member of a municipal civil service commission cannot hold an office or position in the city or city school district thereof that has

a power of appointment, promotion, lay-off or suspension of an officer or employe, nor can he hold a position in the classified service in such city or city school district. As to county and state offices, the duties of the particular positions must be examined to determine whether they come within the rule laid down by Judge Dustin." (State ex rel. v. Gebert, 12 O. C. C. (N. S.) 274) as to incompatibility of officer. — Atty. Gen., Mar. 28, 1914.

Sec. 486-23. [**Political assessments. Political activity.**] No officer, employe or subordinate in the classified service of the state, the several counties, cities and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution or payment from any officer, employe or subordinate in the classified service of the state, the several counties, cities or city school districts thereof; nor shall any officer or employe in the classified service of the state, the several counties, cities and city school districts thereof be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.

"An indictment charging the willful solicitation of political contributions from employes in the classified service (103 O. L. 710, § 23; G. C. 486-23), need not aver knowledge that they were in the classified service, for willful doing involves doing with knowledge." — State v. Finley, 15 N. P. (N. S.) 499.

"Alleging that defendants were 'concerned' in soliciting political contributions (using the statutory word, 103 O. L. 710, § 23; G. C., 486-23), does not mean interested in or anxious about the same, but that they participated." — State v. Finley, 15 N. P. (N. S.) 499.

"A charge that on or about January 15th the defendant solicited political contributions from persons who were in the classified service 'during the month' of January, means that they were so employed during the whole month and therefore on the 15th." — State v. Finley, 15 N. P. (N. S.) 499.

"A person in the classified service under the civil service law cannot be a candidate for office either at a primary or at an election and at the same time retain his position. If he becomes such a candidate it would be cause for removal from the position he holds, as he accepts such position upon condition that he will not take part in politics. If the person in the classified service desires to be a candidate for office or nomination he should resign his position in the classified service." — Atty. Gen., Apr. 24, 1914.

"This provision would prevent a person in the classified service from being a member of an executive committee of a political party. The official court stenographer and the superintendent of municipal water and electric light plant cannot serve on such committee and at the same time hold their positions." — Atty. Gen., Sept. 12, 1914.

Official stenographers of courts of record are exempt from examination under the present law. See Sec. 486-8 (10).

Sec. 486-24. **[Frauds in examination prohibited.]** No person or officer shall wilfully or corruptly by himself or in cooperation with one or more persons defeat, deceive, or obstruct any person in respect of his or her right of examination, appointment or employment according to this act, or to any rules or regulations prescribed pursuant thereto; or wilfully or corruptly, falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this act, or aid in so doing; or wilfully or corruptly make any false representations concerning the same, or concerning the person examined; or wilfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified; or personate any other person, or permit or aid in any manner any person to personate him, in connection with any examination, registration or appointment or application or request to be examined, registered or appointed; or who shall furnish any false information about himself, or any other person, in connection with any examination, registration or appointment or application or request to be examined, registered or appointed.

Sec. 486-25. [Payment for places prohibited.] No applicant for appointment or promotion in the classified service shall, directly or indirectly, pay or promise to pay any money or other valuable thing, nor shall he ask or receive any recommendation or assistance from any person, upon the consideration of any political service to be rendered, for or on account of his appointment or promotion, or proposed appointment or promotion.

Sec. 486-26. [Abuse of official power.] No officer or employe of the state, the several counties, cities and city school districts thereof shall appoint, promote, reduce, suspend, lay-off, discharge, or in any manner change the official rank or compensation of any officer, employe or subordinate in the classified service, or promise or threaten to do so, for giving or withholding, or neglecting to make any contribution of money or other valuable thing for any party or political purpose, or for refusal or neglect to render any party or political service.

Sec. 486-27. [Abuse of political influence.] No person who holds any public office, or who has been nominated for, or who seeks a nomination or appointment to any public office, shall corruptly use or promise to use either directly or indirectly, any official authority or influence in order to secure or aid any person in securing for himself or another any office or employment in the classified service, or any promotion or increase of salary therein, as a reward for political influence or service. Nor shall any person, by means of threats or coercion, induce or seek to induce anyone in the classified service to resign his position or to waive his right to certification, appointment or promotion.

Sec. 486-28. [Violations; penalty.] Whoever, after a rule has been duly established and published by any civil service commission according to the provisions of this act, makes an appointment to office or selects a person for employment contrary to the provisions of such rule, or wilfully refuses or neglects otherwise to comply with or

to conform to the provisions of this act, or wilfully violates any of such provisions, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court. If any person so convicted shall hold any public office or place of public employment such office or position shall by virtue of such conviction be rendered vacant.

Sec. 486-29. [**Taxpayers' right of action.**] The right of any taxpayer to bring an action to restrain the payment of compensation to any person appointed to or holding any office or place of employment in violation of provisions of this act, shall not be limited or denied by reason of the fact that said office or place of employment shall have been classified as, or determined to be classified as, not subject to competitive examination; provided, however, that any judgment or injunction granted or made in any such action shall be prospective only, and shall not affect payments already made or due to such persons by the proper disbursing officers, in accordance with the civil service rules in force at the times of such payments.

Sec. 486-30. [**Prosecutions.**] Prosecutions for the violation of the provisions of this act, or the rules and regulations of the state commission established in conformity thereto, shall be instituted by the attorney-general or by the state commission acting through special counsel, or by the county prosecutor for the county in which the offense is alleged to have been committed; and prosecutions for violations of this act and the rules and regulations of any municipal commission by any officer or employe of such city, shall be instituted by such municipal commission through the legal department of such city or by such municipal commission acting through special counsel.

Sec. 486-31. [**Schedule.**] All officers, employes and subordinates in the classified service of the state, the

several counties, cities and city school districts thereof, holding their positions under existing civil service laws, and who are holding such positions by virtue of having taken a regular competitive examination as provided by law, shall, when this act takes effect, be deemed appointees within the provisions of this act; but no person holding a position in the classified service by virtue of having taken a non-competitive examination shall be deemed to have been appointed or to be an appointee in conformity with the provisions of this act; provided, however, that all persons who have served the state or any political subdivision thereof continuously and satisfactorily for a period of not less than seven years next preceding January 1, 1915, shall be deemed appointees within the provisions of this act.

The name of each officer, employe and subordinate holding a position in the classified service of the state, the counties, cities and city school districts thereof at the time this act takes effect, who has not passed a regular competitive examination and who has not been in the service seven years as herein provided, shall, within ten days after this act becomes effective, be reported by the appointing authority to the commission and shall be certified to the appointing authority in addition to the three candidates for appointment to such position. If any such person is reappointed, he shall be deemed to have been appointed under the provisions of this act. If no eligible list exists such person may be retained as a provisional employe until such time, consistent with reasonable diligence, as the commission can prepare eligible lists when such position shall be filled as prescribed in this act; provided that nothing contained in this section shall be deemed to vacate the office of existing chiefs of police departments or chiefs of fire departments of municipalities. All existing eligible lists of persons who have taken regular competitive examinations shall continue in force for the term of eligibility to be fixed by the commission

as provided herein. All property of the existing state commission shall become the property of the commission to be appointed hereunder.

"Under the provisions of this section it is clear that unless no eligible list exists, a person holding a position in the classified service at the time the act goes into effect by virtue of a non-competitive examination ceases to have any right to continue to perform his duties and receive his compensation. It is not necessary that such person be removed by the appointing authority, but section 486-31 of itself has the effect of removing him (unless, of course, he has continuously and satisfactorily served the state or any political subdivision thereof for a period of not less than seven years next preceding January 1, 1915). Even if no eligible list exists, such person has, strictly speaking, no right to continue to serve the state or one of its political subdivisions until removed, but in such event his retention may be deemed to be in the capacity of a provisional employe only and may last until such time only as the commission may, consistent with reasonable diligence, prepare eligible lists." — Atty. Gen., Aug. 7, 1915.

"The only proper way in which the services of a person now holding a position in the classified service of the state, as defined by the new law, under and by virtue of a non-competitive examination may be continued in such position after the new act goes into effect, when there is an eligible list, is for the appointing officer, acting in accordance with section 486-13, to report his appointment to the civil service commission. It is clear at least that some positive and unequivocal act on the part of the appointing authority is necessary in order to constitute an 'appointment,' and that such persons under the circumstances named may not continue to occupy their positions without such an appointment." — Atty. Gen., Aug. 7, 1915.

It is clearly the intent of the law that the officer, employe or subordinate holding positions in the classified service at the time the civil service law of 1915 went into effect shall be certified, without the requirements of a competitive examination; "and shall by virtue of their former service, stand in the same position before the appointing authority as the other three candidates who have taken a competitive examination. This provision gives the appointing authority the privilege of retaining a competent officer, employe or subordinate who, during a term of service less than seven years in duration, has acquired experience and demonstrated his fitness for the position." — Atty. Gen., Sept. 10, 1915.

Section 2. [Repeals.] Sections 486-1, 486-2, 486-3, 486-4, 486-5, 486-6, 486-7, 486-8, 486-9, 486-10, 486-11, 486-12, 486-13, 486-14, 486-15, 486-16, 486-17, 486-18, 486-19, 486-20, 486-21, 486-22, 486-23, 486-24, 486-25, 486-26, 486-27, 486-28, 486-29,

486-30, 486-31 and 4505 of the General Code and all other acts or parts of acts inconsistent with the provisions of this act be, and the same are hereby repealed.

CHARLES D. CONOVER,
Speaker of the House of Representatives.

JOHN H. ARNOLD,
President of the Senate.

Passed May 27, 1915.

Approved May 28, 1915.

FRANK B. WILLIS, Governor.

Filed in office of Secretary of State June 1, 1915.

The sectional numbers herein are in conformity to the General Code.

EDWARD C. TURNER,
Attorney General.

VALIDITY OF CIVIL SERVICE ACT UPHELD BY SUPREME COURT.

The question of the validity of the Civil Service Act of 1915, as it appears on the preceding pages, was raised in the case of William Ritzman vs. Z. B. Campbell et. al. The enrolled bill signed by the presiding officers of the two houses and the governor differed from the bill passed by the General Assembly, as recorded in the journal of the House. The difference occurred in the third clause of division (a) of section 486-8. The House journal showed that instead of the expression "boards and commissions" where it occurs the second time, there should appear the words "and bureaus". The supreme court rendered a decision on December 11, 1915, all judges concurring, in which it was held that the enrolled bill signed by the presiding officers of the two houses and the governor, is the law.

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